

**NOMINATION OF HON. JOHN J. SULLIVAN  
FOR DEPUTY SECRETARY,  
U.S. DEPARTMENT OF COMMERCE**

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**HEARING**

BEFORE THE

**COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION  
UNITED STATES SENATE**

**ONE HUNDRED TENTH CONGRESS**

**SECOND SESSION**

**MARCH 13, 2008**

Printed for the use of the Committee on Commerce, Science, and Transportation



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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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**NOMINATION OF HON. JOHN J. SULLIVAN  
FOR DEPUTY SECRETARY,  
U.S. DEPARTMENT OF COMMERCE**

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**THURSDAY, MARCH 13, 2008**

U.S. SENATE,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2 p.m. in The Capitol, SC-6, Hon. Daniel K. Inouye, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. DANIEL K. INOUE,  
U.S. SENATOR FROM HAWAII**

The CHAIRMAN. As you know, this is an unusual time. We're having votes every 12 minutes.

I'm so glad that when most Americans think of the Department of Commerce, they think of trade and business, but the nominee before us, Mr. John Sullivan, and the Members of the Committee know that it is much, much more than that and because of the time restrictions, without objection, my full statement will be part of the record.

[The prepared statement of Senator Inouye follows:]

PREPARED STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII

I am certain that when most Americans think of the Department of Commerce they think of trade and business, but the nominee before us, Mr. John Sullivan, and the Members of the Committee know that it is so much more.

The Department's mission includes conserving and managing our ocean resources, ensuring accuracy in standards and measurements, counting our citizens, providing economic opportunity, managing spectrum policy, and predicting the weather both for tomorrow and for the long term. The Commerce Department is even responsible, in part, for helping Americans keep their televisions functioning once the digital television transition is complete.

We need strong leaders at the Department who are committed to all of the Department's missions. For example, the Nation's commerce will suffer if the Department, through the National Oceanic and Atmospheric Administration (NOAA), does not promote good stewardship of our environment and its resources.

This session, the Committee and the Senate will be looking to act on many issues related to the Department of Commerce. If you are confirmed, Mr. Sullivan, we will need your help to enact legislation to promote travel and tourism to the United States and to understand and respond to the threat of global climate change. We will need your help to ensure that the digital television transition runs smoothly, that our system of Earth observing satellites remains viable, and that our shared vision to promote American competitiveness through science and innovation is implemented.

We look forward to working with you, should you be confirmed.

Mr. Sullivan, do you have any family members that you would like to introduce to the Committee?

The CHAIRMAN. Please introduce your family.

Mr. SULLIVAN. Thank you, Mr. Chairman. I first have to note that my wife and oldest son, Jack, were not able to join us today. They had a previously scheduled trip on spring break, but I'm joined by my daughter, Katie Sullivan and my son——

The CHAIRMAN. Welcome.

Mr. SULLIVAN.—Teddy Sullivan, and my in-laws, Graciela and Rueben Rodriguez.

The CHAIRMAN. That's wonderful. Senator Stevens?

**STATEMENT OF HON. TED STEVENS,  
U.S. SENATOR FROM ALASKA**

Senator STEVENS. I'd like to put my statement in the record and welcome you, Mr. Sullivan. We're pleased that the Chairman has held this rather impromptu hearing for you.

[Laughter.]

Mr. SULLIVAN. Thank you, Senator Stevens.

[The prepared statement of Senator Stevens follows:]

PREPARED STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

Mr. Chairman, thank you for holding this afternoon's hearing. The jurisdiction of the Department of Commerce is extensive, ranging from enforcement of international trade agreements to improvement of the state of fisheries and the oceans to development of telecommunications and information policy issues. As Chief Operating Officer, the Deputy Secretary of the Department has many demanding responsibilities and it is crucial the individual chosen to fill this position be capable and knowledgeable about all aspects of the Department. Especially now, at a time when the Commerce Department is in the midst of executing many challenging initiatives.

I look forward to hearing from Mr. Sullivan today and discussing his ideas for the Department and I congratulate him on his nomination.

The CHAIRMAN. You don't mind if——

Mr. SULLIVAN. Absolutely not. Thank you, Mr. Chairman.

The CHAIRMAN. It's your show.

**STATEMENT OF HON. JOHN J. SULLIVAN, NOMINEE TO BE  
DEPUTY SECRETARY, U.S. DEPARTMENT OF COMMERCE**

Mr. SULLIVAN. Thank you, Mr. Chairman and Mr. Vice Chairman. I'm honored to appear here before you today as the President's nominee to be the next Deputy Secretary of the Department of Commerce.

I'm grateful and honored that the President has given me this opportunity to continue serving the American people and I'm deeply appreciative of the confidence and support shown to me by Secretary Gutierrez.

I'd also like to thank the Committee and both you, Mr. Chairman, and you, Senator Stevens, and your staff for their courtesies that have been extended to me in the course of this nomination proceeding. I'm very grateful for that.

Today, I'd like to briefly—I know you have time constraints—just briefly give you a sense of what I'd like to accomplish as Deputy Secretary of Commerce, if given that opportunity.

Let me begin by stating my strong commitment to the core mission of the Department to serve the American people by helping to create the right conditions for economic growth and expanded opportunity.

The Commerce Department addresses a wide range of important challenges each and every day. We encourage environmental stewardship. We promote innovation, foster entrepreneurship and enhance competitiveness. Our work takes place on a global basis, from marine fisheries and the National Weather Service to the Census and numerous scientific, environmental, technological and economic endeavors.

The Department's Deputy Secretary effectively serves as the Department's Chief Operating Officer, overseeing its 38,000 employees and \$7.6 billion budget. One of the deputy's most important roles is to serve as a forceful advocate within the Administration for the Department's programs in the development of the President's budget. The Deputy Secretary also acts as the Secretary's primary advisor and surrogate.

With the support of this Committee and the hardworking men and women of the Department, I'm confident that I can maintain the high standards set by my predecessors and support the commitment to excellence embodied by Secretary Gutierrez.

I believe my experience, both in government and in the private sector, will help me in that endeavor. In two decades of law practice, I've had the privilege of serving in a wide variety of positions, as a law clerk to Judge John Minor Wisdom and to Supreme Court Justice David H. Souter, as counselor to the Assistant Attorney General in charge of the Office of Legal Counsel at the Justice Department, as a partner in the law firm of Mayer, Brown, as Deputy General Counsel to the Department of Defense, and in my current position as General Counsel of the Department.

In these varied roles, I believe I have developed the skills and experience necessary to address the challenges and opportunities facing the Commerce Department. Yet I also recognize that I have much to learn about facets of the Department that I have not worked with on a regular basis.

As I look forward to this continued education, I know that I will be well supported by the deep and talented staff of career employees and other professionals at the Department. I'm confident that with their support, I will be able to perform my duties with the skill and professionalism that President Bush, the Members of this Committee, Secretary Gutierrez and the public expect and deserve.

If confirmed, I will work side by side with Secretary Gutierrez as he leads the Department's focus on economic growth and job creation, will promote the wise stewardship of our environment and our natural resources, will open foreign markets, work to level the playing field for American businesses, farmers and workers, will insist that our trading partners fully comply with their trade agreements, and we will foster technological innovation while defending intellectual property rights.

We'll implement effective export controls, and we will oversee the collection of sound economic and demographic statistics.

I look forward to the prospect of working with this Committee on these and other important issues.

I'd like to conclude with a statement of my firm conviction that stewardship through public service is a special privilege and responsibility. If confirmed, I will commit my utmost energies, integ-

ity and devotion to serving the President and the American people.

Thank you again for the opportunity to appear before you today and for your consideration of my nomination. I'd be pleased to respond to any questions for me that you may have.

[The prepared statement and biographical information of Mr. Sullivan follow:]

PREPARED STATEMENT OF JOHN J. SULLIVAN, NOMINEE TO BE DEPUTY SECRETARY,  
U.S. DEPARTMENT OF COMMERCE

Mr. Chairman, Mr. Vice Chairman, members of the Committee,

I am honored to appear before you today as the President's nominee to be the next Deputy Secretary of the United States Department of Commerce. I am grateful and honored that the President has given me this opportunity to continue serving the American people, and I am deeply appreciative of the confidence and support shown to me by Secretary Gutierrez. I would also like to thank this Committee and its staff for the courtesies they have extended to me throughout this process.

Today, I would like to give you a better sense of what I hope to accomplish as Deputy Secretary of Commerce—if given that opportunity.

Let me begin by stating my strong commitment to the core mission of the Department, namely, to serve the American people by helping to create the right conditions for economic growth and expanded opportunity. The Commerce Department addresses a wide range of important challenges each and every day. We encourage environmental stewardship. We promote innovation. We foster entrepreneurship. And we enhance competitiveness. Our work takes place on a global basis—from marine fisheries and the National Weather Service to the Census and numerous scientific, environmental, technological, and economic endeavors.

The Department's Deputy Secretary effectively serves as its Chief Operating Officer, overseeing its 38,000 employees and \$7.6 billion budget. Indeed, one of the Deputy's most important roles is to serve as a forceful advocate within the Administration for the Department's programs in the development of the President's budget. The Deputy Secretary also acts as the Secretary's primary advisor and surrogate. With the support of this Committee, and the hardworking men and women of the Department, I am confident I can maintain the high standards set by my predecessors and support the commitment to excellence embodied by Secretary Gutierrez.

If confirmed by the Senate, I would bring valuable experience and knowledge to the office of Deputy Secretary. For the past two and a half years, I have served as the Department's General Counsel—acting as the agency's chief legal officer and providing legal advice to the Secretary and senior officials as they conduct their vital work. Handling the myriad legislative, regulatory, and administrative issues faced daily in the Department—from management of marine fisheries to regulation of international trade—has given me a unique perspective into the needs and goals of the Department and its bureaus.

In my two decades of law practice, I have had the privilege of serving in a wide variety of positions; as a law clerk to Judge John Minor Wisdom and to Supreme Court Justice David H. Souter; as Counselor to the Assistant Attorney General in charge of the Office of Legal Counsel at the Justice Department; as a partner in the international law firm now known as Mayer Brown; as Deputy General Counsel of the Department of Defense; and in my current position as General Counsel of the Department of Commerce.

In these varied roles, I believe I have developed the skills and experience necessary to address the challenges and opportunities facing the Commerce Department. Yet I also recognize that I have much to learn about facets of the Department that I have not worked with on a regular basis. As I look forward to this continued education, I know that I will be well supported by the deep and talented staff of career employees and other professionals at the Department. I am confident that, with their support, I will perform my duties with the skill and professionalism that President Bush, the Members of this Committee, Secretary Gutierrez, and the public, expect and deserve.

If confirmed, I will work side-by-side with Secretary Gutierrez as he leads the Department's focus on economic growth and job creation. We will promote the wise stewardship of our environment and our natural resources. We will open foreign markets. We will work to level the playing field for America's businesses, farmers, and workers. We will insist that our trading partners fully comply with our trade



agreements. We will foster technological innovation. We will defend intellectual property rights. We will implement effective export controls. And we will oversee the collection of sound economic and demographic statistics. I look forward to the prospect of working with this Committee on these and other important issues.

Permit me to conclude with my firm conviction that stewardship through public service is a special privilege and responsibility. If confirmed, I will commit my utmost energies, integrity, and devotion to serving the President and the American people. Thank you again for the opportunity to appear before you today, and for your consideration of my nomination.

I would be pleased to respond to any questions that you may have for me.

#### A. BIOGRAPHICAL INFORMATION

1. Name (include any former names or nicknames used): John Joseph Sullivan.
2. Position to which nominated: Deputy Secretary of Commerce.
3. Date of Nomination: December 4, 2007.
4. Address (list current place of residence and office addresses):  
 Residence: Information not released to the public.  
 Office: General Counsel, United States Department of Commerce, 1401 Constitution Avenue, N.W., Room 5870, Washington, D.C. 20230.
5. Date and Place of Birth: November 20, 1959; Boston, MA.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).  
 Spouse: Graciela Maria Rodriguez, Partner, King & Spalding, 1700 Pennsylvania Avenue, N.W., Washington, D.C. 20006-4706.  
 Children: John Hugh Sullivan, 16; Katherine Ann Sullivan, 14; Edward Albert Sullivan, 11.
7. List all college and graduate degrees. Provide year and school attended.  
 Brown University, A.B. in History and Political Science, 1981.  
 Columbia University School of Law, J.D., 1985.
8. List all post-undergraduate employment, and highlight all management-level jobs held and any non-managerial jobs that relate to the position for which you are nominated.  
*General Counsel, United States Department of Commerce (2005 to present).*  
*Deputy General Counsel, United States Department of Defense (2004-2005).*  
*Partner, Mayer, Brown, Rowe & Maw LLP (1997-2004).*  
 Associate, Mayer, Brown & Platt (1993-1996).  
 General Counsel, Phil Gramm for President (1995).  
 Deputy General Counsel, Bush-Quayle 1992 (1992).  
 Counselor to the Assistant Attorney General, Office of Legal Counsel, United States Department of Justice (1991-1992).  
 Law Clerk, Associate Justice David H. Souter, Supreme Court of the United States (1990-1991).  
 Attorney-Adviser, Office of Legal Counsel, United States Department of Justice (1990).  
 Associate, Paul, Weiss, Rifkind, Wharton & Garrison (1987-1990).  
 Law Clerk, Cravath, Swaine & Moore, New York, NY (1986-1987).  
 Law Clerk, Judge John Minor Wisdom, United States Court of Appeals for the Fifth Circuit (1985-1986).  
 Summer Associate, Cravath, Swaine & Moore, New York, NY (1984, 1985)  
 Summer Associate, Milbank, Tweed, Hadley & McCloy, New York, NY (1983)  
 Analyst, Dow Service, Inc., Boston, MA (1981-1982).
9. Attach a copy of your resume. See attached (Appendix A).
10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last 5 years: None.
11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership,

or other business, enterprise, educational, or other institution within the last 5 years: Partner, Mayer, Brown, Rowe & Maw LLP, 1997–2004.

12. Please list each membership you have had during the past 10 years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

Member, New York Bar, 1987 to present.

Member, D.C. Bar, 1993 to present.

Member, Federalist Society, 1990 to present.

Head Coach, Montgomery Youth Hockey Association, 1997–2004.

None of these organizations restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt.

General Counsel, United States Department of Commerce (2005 to present).

Deputy General Counsel, United States Department of Defense (2004–2005).

Both of these positions were the result of appointments, not campaigns.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past 10 years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

See attached records of the FEC (Appendix B).

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

Awarded the Secretary of Defense's Medal for Exceptional Public Service.

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

"Federal Preemption: Two Renditions of Fundamental Theme," *Inside Litigation* (Oct. 1998); "Appeals to the Supreme Court," *Business and Commercial Litigation in Federal Courts* (West 1998); "Supreme Court Bypasses Airbag Preemption Case," Legal Opinion Letter, Washington Legal Foundation (1996); Note, "The Equal Access to Justice Act in the Federal Courts," 84 *Colum. L. Rev.* 1089 (1984).

Speech at the 2007 Ambassador's IPR Roundtable: IPR Protection, Beijing, China (Oct. 23, 2007).

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony.

May 18, 2005—Nomination Hearing before the U.S. Senate Committee on Commerce, Science, and Transportation (nominated to be General Counsel of the United States Department of Commerce).

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

As General Counsel of the Department of Commerce, I have gained wide-ranging experience with the vast array of programmatic responsibilities carried out by the Department and its twelve operating units. As a result of my tenure at Commerce, I have developed a deep appreciation for the importance of the work performed by the 38,000 public servants employed by the Department in ensuring the sustainability of ocean resources, protecting and restoring marine and coastal areas, studying the climate and weather, promoting economic growth and opportunity, expanding the Nation's scientific and technical capabilities, compiling and disseminating demographic and economic data essential to informed decision-making, and facilitating international trade. Both as General Counsel and a member of Secretary

Gutierrez's Executive Management Team, I have a well-grounded understanding of the broad range of issues on which the Department works and the resources available to it in carrying out its mission.

I gratefully accepted the opportunity to serve Commerce as its General Counsel two and one-half years ago out of a belief that public service is a special privilege and responsibility. If confirmed by the Senate as Deputy Secretary, I look forward to enhancing my ability to influence Commerce's efforts to fulfill its mission and to make sure that the American public receives the best services possible.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

If confirmed as Deputy Secretary, I will continue to maintain the close working relationships with bureau managers that were established by my predecessors. As the Department's chief operating officer, I will exercise the oversight needed to ensure that Commerce programs are effective and our organizational goals and objectives are achieved. In addition to routine day-to-day interaction with bureau leadership, we will continue to conduct weekly Executive Management Team meetings under the direction of Secretary Gutierrez, and to hold formal program performance reviews throughout the year.

Through close scrutiny of program operations and by holding managers at all levels responsible for program results, the Department will continue to strengthen all facets of its operations. I am committed to maintaining the Department's success as a performance-oriented organization, and to further implementing management reforms such as those established under the President's Management Agenda. I will also be an aggressive advocate with OMB and the Congress to ensure that the Department and its bureaus have the financial resources to accomplish their mission.

In addition, I have extensive experience in managing a large organization. During my time as General Counsel, I have been responsible for my office's annual budget of more than \$30 million and have overseen the work of over 400 lawyers in the 14 different legal offices that provide advice on myriad legal issues and policy considerations affecting the Department and its diverse programs. I directly supervise the offices of three Assistant General Counsels and seven Chief Counsels, and provide legal and policy direction for four additional legal offices that receive their funding and personnel allocations from their bureaus.

20. What do you believe to be the top three challenges facing the department/agency, and why?

*Managing the development and acquisition of satellites.* The National Oceanic and Atmospheric Administration (NOAA) is in the process of acquiring its next-generation geostationary (GOES-R) and Polar (NPOESS) satellite systems, in collaboration with the National Aeronautics and Space Administration (NASA) and the Air Force. It is entering the main procurement phase for GOES-R, and has restructured NPOESS following the recertification required under Nunn-McCurdy due to significant cost overruns and schedule delays. Because the accuracy of both routine and severe weather forecasts depends on NOAA's satellites, they are critically important to public safety and defense operations. Acquiring satellites is a lengthy process involving both cutting-edge technical issues and large capital expenditures, making this one of the Department's most important challenges.

*Assuring the overall success and accuracy of the 2010 Census.* Managing the people, the technology, the testing, and the budgets involved with the 2010 census is a critical priority. Every American community has a stake in the outcome of the census, and its success is integrally linked to the public's faith in the Census Bureau's ability to secure the information that is collected. The Department is committed to fulfilling this Constitutional responsibility by protecting the data that is gathered, implementing the most effective technologies, and improving the coverage and efficiency of the upcoming Decennial Census.

*Facilitating the Nation's transition from analog to digital television technology.* The National Telecommunications and Information Administration (NTIA) is playing a crucial role in the Nation's move from analog to digital television. Under the Digital Television Transition and Public Safety Act of 2005, NTIA is establishing and managing several new programs. Two of these—a grant program for public safety interoperable communications and a coupon program for television converter boxes—each have \$1 billion budgets, although the latter could increase to \$1.5 billion. As a result of the nationwide scope and impact of these programs, this is a critical initiative and ensuring the success of these efforts is one of the Department's highest priorities.

## B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

I continue to maintain an interest in a 401(k) savings plan established by my former employer (Mayer, Brown, Rowe & Maw LLP). As disclosed in my attached financial disclosure form (See attached SF-278 (Appendix C)\*), my account is vested in diversified mutual funds and no contributions to this account have been made (or will be) since the termination of my employment in February 2004.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain: No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated: See attached ethics agreement (Appendix D).

4. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated: None.

5. Describe any activity during the past 10 years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

I represented, on a pro bono basis, the Special Operations Warrior Foundation, which sought a Federal charter from Congress.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items: See attached ethics agreement (Appendix D).

## C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain: No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain: No.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain: No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain: No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain: No.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination: None.

## D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by Congressional committees? Yes.

2. Will you ensure that your department/agency does whatever it can to protect Congressional witnesses and whistleblowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

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\*This document is retained in the Committee files and is also available from the U.S. Office of Government Ethics.

## APPENDIX A—RESUME

JOHN J. SULLIVAN

**Employment**

United States Department of Commerce, Washington, D.C., General Counsel, July 2005 to present.

United States Department of Defense, Washington, D.C., Deputy General Counsel, February 2004 to June 2005.

Mayer, Brown, Rowe & Maw LLP, Washington, D.C., Partner, January 1997 to February 2004; Associate, February 1993 to December 1996.

Bush-Quayle 1992, Washington, D.C., Deputy General Counsel, January 1992 to December 1992.

United States Department of Justice, Washington, D.C., Counselor to the Assistant Attorney General, Office of Legal Counsel, September 1991 to January 1992; Attorney-Adviser, Office of Legal Counsel, March 1990 to October 1990.

Paul, Weiss, Rifkind, Wharton & Garrison, New York, NY, Associate, October 1987 to March 1990.

Cravath, Swaine & Moore, New York, NY, Law Clerk, September 1986 to September 1987.

**Clerkships**

Associate Justice David H. Souter, Supreme Court of the United States, Law Clerk, October Term 1990.

Judge John Minor Wisdom, United States Court of Appeals for the Fifth Circuit, Law Clerk, June 1985 to August 1986.

**Education**

Columbia University School of Law, New York, NY

J.D., May 1985. Book Reviews Editor, *Columbia Law Review*; Harlan Fiske Stone Scholar.

Brown University, Providence, RI

A.B., History and Political Science, June 1981.

## APPENDIX B

## FEC INDIVIDUAL CONTRIBUTION SEARCH RESULTS (DECEMBER 10, 2007)

*Presented by the Federal Election Commission*

**Individual Contributions Arranged By Type, Giver, Then Recipient***Contributions to Political Committees*

Sullivan, John; Bethesda, MD 20817; Mayer Brown Rowe & Maw  
Floyd, Charles via *Floyd for Congress Committee*; 12/15/2003; \$500.00

Sullivan, John; Bethesda, MD 20817; Mayer Brown Rowe & Maw/Attorney  
Ryan, Jack via *Jack Ryan for U.S. Senate*; 02/06/2004; \$500.00

Sullivan, John J.; Bethesda, MD 20817; Mayer Brown & Platt  
Bush, George W. via *Bush for President Inc.*; 05/13/1999; \$1,000.00

Sullivan, John J. Mr.; Bethesda, MD 20817; Department of Commerce/Attorney  
*Republican National Committee*; 12/13/2005; \$550.00

Sullivan, John J. Mr.; Bethesda, MD 20817; Mayer Brown Rowe & Maw/Attorney  
Bush, George W. via *Bush-Cheney 2004 (Primary) Inc.* 05/29/2003; \$2,000.00  
Bush, George W. via *Bush-Cheney 2004 Compliance Committee Inc.*; 08/18/2004; \$2,000.00

Sullivan, John J. Mr.; Bethesda, MD 20817; Mayer Brown Rowe & Maw/Attorney  
*Republican National Committee*; 12/26/2003; \$500.00

Total Contributions: \$7,050.00

GENERAL COUNSEL OF THE OF UNITED STATES DEPARTMENT OF COMMERCE  
*Washington, DC, November 8, 2007*

Memorandum For: Barbara S. Fredericks  
 Assistant General Counsel for Administration  
 From: John J. Sullivan  
 Subject: Ethics Agreement

The purpose of this memorandum is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am appointed to the position of Deputy Secretary of Commerce.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in my official capacity in any particular matter that has a direct and predictable effect on my financial interests or those of any other person whose interests are imputed to me, unless I first obtain a written conflict of interest waiver, pursuant to section 208(b)(1), or qualify for a regulatory exemption, pursuant to section 208(b)(2). I understand that the interests of the following persons are imputed to me: my spouse, minor children, or any general partner; any organization in which I serve as an officer, director, trustee, general partner, or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Specifically, I will not personally and substantially participate in any particular matter that will have a direct and predictable effect on my wife's law firm, King & Spalding, unless I first obtain a written waiver or am permitted to participate due to a regulatory exemption. Furthermore, pursuant to 5 C.F.R. § 2635.502, I will not participate in any particular matter involving specific parties in which any client of my spouse is a party or represents a party, unless I am authorized to participate under 5 C.F.R. § 2635.502(d).

In addition, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the ability or willingness of the following bond issuers to pay their debt obligation to me or on the market value of the bond, unless such participation is permitted by regulatory exemption or written conflict of interest waiver:

Cecil County, Maryland  
 Maryland Department of Transportation  
 Montgomery County, Maryland  
 Prince George's County, Maryland, and  
 Washington Suburban Sanitary District.

Within 90 days of my confirmation, I will issue a statement memorializing these recusals.

With respect to my financial interests from which disqualification is not presently required because of the applicability of a regulatory exemption, should a financial interest no longer qualify for an exemption, I will immediately disqualify myself from participating in matters affecting the interest, unless it is covered by another exemption, and will seek advice from a Department of Commerce ethics official regarding other ways to avoid a conflict of interest.

In the event my participation in a matter from which I am disqualified is important to the Government, I will seek advice from an ethics official on means to resolve a conflict of interest, such as by divestiture or by obtaining a conflict of interest waiver.

cc: Secretary Carlos M. Gutierrez

The CHAIRMAN. Thank you very much, Mr. Sullivan. I just have a question that NOAA is given a little high priority because Alaska has the longest coastline, Hawaii is surrounded by the ocean, NOAA is very important.

I have one concern, the transition from analog to digital, and I hope you will take personal care of that.

Any questions?

Senator STEVENS. No, I don't have any questions either. I congratulate you. I, too, was a general counsel for a major department. I think you have the background for this job and look forward to working with you.

Mr. SULLIVAN. Thank you very much.

The CHAIRMAN. Any further statement?

Mr. SULLIVAN. Nothing further, other than to say, Mr. Chairman, thank you.

The CHAIRMAN. Well, in 2 hours, we'll be voting on you.

Mr. SULLIVAN. Thank you.

The CHAIRMAN. This is a little—I suppose this is the first time we've done this for you.

Mr. SULLIVAN. I appreciate that, Mr. Chairman.

Senator STEVENS. We're happy to do it for you.

The CHAIRMAN. So, with that, thank you very much.

Mr. SULLIVAN. Thank you.

The CHAIRMAN. The hearing's adjourned.

[Whereupon, at 2:15 p.m., the hearing was adjourned.]





## A P P E N D I X

### RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JIM DEMINT TO HON. JOHN J. SULLIVAN

*Question 1.* In your current position as General Counsel, you are responsible for advising the Secretary and others in the Department on how to comply with various legal obligations—whether they originate from Congress or from international agreements and bodies to which Congress previously assented. How do you view rulings by the Appellate Body of the World Trade Organization (“WTO”) in terms of the United States’ responsibility to comply with them? Do you believe the U.S. ability to demand compliance by other nations with WTO rulings is compromised when the U.S. fails to fully and timely comply itself?

Answer. The WTO Agreements are important international agreements that Congress has implemented through precise statutory language. In my role as General Counsel, I am necessarily mindful, first and foremost, of the requirements of U.S. law and the statutory provisions adopted by Congress regarding the relationship between U.S. law and recommendations and rulings adopted by the Dispute Settlement Body (“DSB”) of the WTO. With respect to DSB recommendations and rulings related to decisions of the Department of Commerce in antidumping and countervailing duty proceedings, these statutory provisions require consultations between the U.S. Trade Representative, the relevant agency, and relevant Congressional Committees prior to implementing any DSB recommendation or ruling. Thus, my view of any particular ruling is based on the merits of the ruling itself and informed by the congressionally mandated consultation process.

The dispute settlement procedures incorporated into the WTO Agreements represent a significant advance in international dispute resolution. The procedures provide for consideration of disputes by panels of experts and allow for appeal of panel reports to the permanent Appellate Body set up by the DSB. Reports of the panels and the Appellate Body are adopted by the DSB within strict timelines and can only be rejected by consensus vote. They provide an important means for resolving trade disputes among WTO Members and consequences for the failure to comply with WTO obligations. The United States has fully complied with WTO rulings in the vast majority of cases, and we will continue to seek compliance by our trading partners with their WTO obligations. As you know, however, the United States has expressed concern with respect to the reasoning in several recent Appellate Body reports reviewing panel rulings regarding the issue of so-called “zeroing.” The United States has noted both that the reports impose obligations to which WTO Members did not agree in the Uruguay Round of negotiations and that multiple panels (currently up to four) have interpreted the Antidumping Agreement differently than the Appellate Body with respect to this issue.

*Question 2.* I am concerned by DOC’s failing to comply with the WTO Appellate Body’s ruling in *United States—Measures Relating to Zeroing and Sunset Reviews* (“Zeroing”) (WT/DS322). DOC previously committed itself to comply with that ruling by December 24, 2007. That date has come and gone and now Japan has taken steps toward imposing \$248 million in retaliatory tariffs on U.S. exports for lack of compliance with the ruling. DOC’s failure to implement the ruling, which is harming a number of manufacturers all over the country, seems to fly in the face of U.S. legal obligations and is contrary to the President’s free trade agenda. Why has DOC not fully implemented the ruling? What steps is DOC taking to avoid retaliatory tariffs?

Answer. While we place great importance on respecting our WTO obligations, the United States continues to be deeply troubled by the Appellate Body report’s evaluation of the issue of “zeroing.” The report’s reasoning presents serious problems both from the perspective of treaty interpretation and from the practical perspective of WTO Members endeavoring to administer their antidumping regimes consistently with their WTO obligations. The United States took steps to come into compliance with our WTO obligations following the release of that report, but Japan remains dissatisfied. In January, Japan requested retaliation authority from the WTO and

we have objected, resulting in a referral of their request to arbitration. Japan subsequently informed the DSB that, because there appears to be broad disagreement between Japan and the United States as to the issues of compliance in this dispute, Japan intends to initiate compliance proceedings under Article 21.5 of the Dispute Settlement Understanding, and to suspend the arbitration during the compliance proceedings.

We have continued to consult with the relevant Congressional committees regarding our efforts on zeroing. In addition, we have pressed hard in Geneva to get others to recognize that these rulings have adverse implications for their antidumping systems, specifically, and their ability to know and act consistently with all of their WTO obligations, more generally. Moreover, in accordance with the general negotiating objectives set forth in U.S. Trade Promotion Authority to “preserve the ability of the United States to enforce rigorously its trade laws, including the antidumping . . . laws”, we have proposed that the Antidumping Agreement be revised to make clear that there is no requirement to provide offsets for non-dumped sales when fashioning and applying a remedy for injurious dumping.

This issue remains unsettled within the WTO. In our dispute with Mexico at the WTO concerning this practice, the panel issued its decision in December. This was the third panel to find that the existing Antidumping Agreement does not prohibit zeroing in contexts such as administrative reviews, directly disagreeing with the Appellate Body’s analysis of the text. Moreover, in November, the Chair of the Rules Negotiating Group issued a draft text that would make explicit the right of Members to use this methodology in administrative reviews, among other contexts.

